

<u>Residence</u>	<u>Your Current Monthly Rate</u>	<u>The Increased Rate to Call Couderstport and Ulyses Toll-Free</u>	<u>Your Increase in Monthly Rate</u>
One-Party	\$	\$	\$3.95
One-Party (LMS)	\$	\$	\$3.95
Two-Party	\$	\$	\$3.95
Four-Party	\$	\$	\$3.95
<u>Business</u>			
One-Party	\$	\$	\$3.95
One-Party (LMS)	\$	\$	\$3.95
Two-Party	\$	\$	\$3.95
Four-Party	\$	\$	\$3.95
Semi-Public	\$	\$	\$3.95
Rotary Access	\$	\$	\$3.95
Trunk-Res.			

The above rate increases are for your local service only. Charges will not change for your touch tone service, inside wire maintenance or applicable mileage/zone charges.

You can determine if this extended area service will benefit you by comparing the increase in your monthly rate to what you are now paying in toll charges to the 274 Couderstport and 848 Ulyses numbers. Your telephone bill itemizes those monthly toll charges.

The enclosed card is your ballot. The person in your household whose name is on your telephone bill, Frontier Communications of Oswayo River's "customer of record," must choose and mark a box, sign, and date the ballot. The ballots will be counted by the PUC officials. Please return the postage-paid ballot to the PUC on or before _____. The PUC will not count ballots postmarked after _____.

In order for the PUC to grant extended area service,

- At least 50 percent of all Frontier Communications of Oswayo River, Inc.'s customers must vote, and
- More than 50 percent (or a majority) of the returned ballots must be in favor of extending the local calling area.

If you have questions about this notice, please call our business office at (814) 697-6101, and we will answer your questions.

Please use a pen and mark only one of the boxes below:

☐

I am willing to pay the higher local service rates shown in this notice and dial toll-free to Coudersport and Ullyses telephone numbers.

☐

I prefer to pay toll charges when I call Coudersport and Ullyses and keep my lower current local service rates.

Signature _____ Date _____

Print Name _____

Telephone Number _____

Frontier Communications of Oswayo River, Inc.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

ISSUED: September 23, 1998

Attachment 3

IN REPLY PLEASE
REFER TO OUR FILE
C-00957322
C-00957324

KAREN E TUCKER ET AL
R D #1 BOX 618
GENESEE PA 16923

Karen E. Tucker, Mary Grom, David Smiker, Nicholas Reitter, Ivan R. Lehman et al. v.
Frontier Communication of Oswayo, Inc. and Bell Atlantic-Pennsylvania, Inc.
AT&T Communications of Pennsylvania, Inc. and Bell Atlantic-Pennsylvania, Inc.

TO WHOM IT MAY CONCERN:

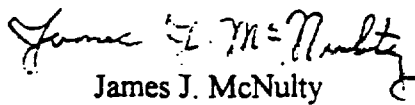
Enclosed is a copy of the Recommended Decision of Administrative Law Judge Debra Paist. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision. All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and/or late filed replies might not be considered by the Commission.

Very truly yours,



James J. McNulty
Secretary

law
Encls.

Certified Mail

Receipt Requested

cc: ALJ PAIST/ OFFICE OF ALJ/ OSA/ BFUS-TARIFF/ OTS/ OCA/ LAW/ BFUS/ PIO/ CEEP/ AUDITS/ OUR FILE/ NEW FILING/
CHAIRMAN/ COMMISSIONERS

See attached
for additional
parties of record

REN E TUCKER ET AL
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P O BOX 86
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GENESEE PA 16923

DAVID SMOKER
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NESEE PA 16923

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Karen E. Tucker, Mary Grom,	:	
David Smoker, Nicholas Reitter,	:	
Ivan R. Lehman et al.	:	
	:	
v.	:	
	:	
Frontier Communications of	:	Docket No. C-00957322
Oswayo, Inc. and Bell Atlantic-	:	
Pennsylvania, Inc.	:	
	:	
AT&T Communications of	:	Docket No. C-00957324
Pennsylvania, Inc. and Bell	:	
Atlantic-Pennsylvania, Inc.	:	

RECOMMENDED DECISION

Before
Debra Paist
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

The above-captioned consolidated cases involve interLATA¹ extended area service (EAS) from Frontier Communications of Oswayo River, Inc. (Frontier) telephone exchanges in Genesee, Shinglehouse and Millport, Potter County within the Buffalo, New York LATA to Bell Atlantic-Pennsylvania, Inc. (Bell) telephone exchanges in Coudersport and Ulysses, Potter County within the Altoona, Pennsylvania LATA.

¹ The expression interLATA indicates the involvement of more than one LATA. A LATA is a "local access and transport area as designated by Federal law." 52 Pa. Code §63.71. "[T]he purpose of the establishment of LATAs is to delineate the areas in which the various telecommunications companies will operate." Re Implementation of Intrastate Access Charges, 58 Pa. P.U.C. 239, 250 (1983).

On October 10, 1995, Karen E. Tucker and more than 300 other signatories (Customers) jointly filed a formal complaint against Frontier at Docket No. C-00957322 and a formal complaint against AT&T Communications of Pennsylvania, Inc. (AT&T) at Docket No. C-00957324. The complaints sought an expanded local calling area for the 228 Genesee exchange in Frontier's service territory to enable toll-free calls from the 228 exchange to the 274 Coudersport and 848 Ulysses exchanges in Bell's service territory.²

Frontier responded to the complaint at C-00957322 by filing an answer and new matter to which Customers filed a reply. AT&T responded to the complaint at C-00957324 by filing an answer (later amended) and new matter to which Customers filed a reply. In its answer, AT&T alleged that Bell should be joined as an indispensable party.

By a series of letters from January to May 1996, Customers identified certain individuals who would be the Customers' representatives for service and similar purposes.

On January 30, 1996, the Office of Consumer Advocate (OCA) filed a notice of intervention at C-00957322 and C-00957324.

Citing 52 Pa. Code §63.76, OCA filed a motion on June 25, 1996, to join Bell as an indispensable party in the cases at C-00957322 and C-00957324.

² Most signatories to the complaints claimed to have a 228 Genesee exchange, but some claimed to have a 698 Millport exchange.

On July 8, 1996, all parties' representatives participated in a telephonic prehearing conference.³ On July 23, 1996, I issued an order concerning matters discussed at the July 8 conference: I consolidated the cases at C-00957322 and C-00957324 for hearing and disposition, joined Bell as an indispensable party to the consolidated cases, set two days of evidentiary hearings in Genesee to receive customer evidence on community of interest, provided for the use of customer affidavits as a possible substitute for testimony at a hearing, and denied that portion of Frontier's answer and new matter in the nature of a motion to dismiss the complaint at C-00957322.

In an August 12, 1996 letter, I asked that legal counsel for Frontier and Bell file a document indicating whether their respective clients had been advised of the potential for a conflict of interests which might stem from having two different members of the same law firm represent them. By letters dated September 3, 1996 and October 3, 1996, counsel for Frontier and Bell responded that their respective telecommunications clients consented to being represented by different members of the same law firm. By a September 9, 1996 order, I amended the captions of the cases at C-00957322 and C-00957324 to include four named Customer-complainants in addition to the principal Customer-

³ At the conference, the parties noted the complexity of the cases and requested the period July through September for discovery, narrowing of issues, possible settlement negotiations, and preparation of affidavits, testimony and exhibits. The conference resulted in a 95-page transcript.

complainant, Karen E. Tucker.⁴

On October 22 and 23, 1996, day and evening evidentiary hearings were held in Genesee⁵ to receive customer testimony about a community of interest in the requested EAS territory.⁶ Approximately 93 members of the public attended the hearings, and 35 people testified. The statement/affidavit of Customer Steven Baker was admitted into evidence (Tr. 386).

A November 21, 1996 telephonic conference was scheduled but then cancelled upon the parties' notifying me that they were engaged in fruitful discovery and negotiations among themselves (E.g., Tr. 505). In a letter dated November 5, 1996, Frontier requested that further evidentiary hearings be scheduled sometime after December 11, 1996 so that it could make additional efforts to identify the technology and costs associated with possibly providing EAS. I asked that, by December 11, 1996, the parties provide me with a progress report on their negotiations.

On December 11, the parties gave me written status reports on their settlement negotiations, explained their scheduling of a January 1997 conference among themselves, and asked for a stay of further proceedings until sometime after January 17, 1997. A February 3, 1997 telephonic conference was

⁴ The inclusion of the additional names was precautionary to avoid confusion and problems that might arise if Mrs. Tucker ceased at some point to have party standing as occurred with the originally named complainant in the caption of the recent case Jane F. Warner and Lynn J. Smith et al. v. GTE North Inc. and The United Telephone Co. of Pennsylvania, C-00902815 (opinion and order adopted March 13, 1997, entered March 18, 1997).

⁵ Except for AT&T, all parties participated in the hearings.

⁶ The hearings in Genesee resulted in 435 additional pages of transcript.

scheduled but continued at the parties' request until February 21, 1997. At the February 21 conference and in my letter of the same date, times and methods for submitting written testimony, conducting additional evidentiary hearings, and filing briefs were discussed. By a March 7, 1997 letter from OCA, the parties stated their agreement on specified dates for submitting testimony, holding more hearings and filing briefs. By a March 14, 1997 order, I confirmed the timetable of proceedings for the cases, detailed the manner for presenting testimony and exhibits, and explained Commission discovery rules.

Frontier, AT&T, and OCA submitted written direct testimony. Customers, AT&T, Bell, and Frontier submitted written rebuttal testimony. AT&T submitted written surrebuttal testimony. A technical evidentiary hearing was held in Harrisburg on June 25, 1997.⁷ Representatives of all parties participated in the hearing.⁸ Subsequently, AT&T, Bell and Frontier provided all parties of record and me with copies of their responses to data requests made on the record at the June 25 hearing.

By order issued August 7, 1997, the parties were given instructions about brief deadlines, contents and format. The deadline was extended to August 19, 1997 for main briefs and to September 12, 1997 for reply briefs. However, by letters dated August 15, 22 and 27 and September 30, 1997, the parties

⁷ On August 25, 1997, Bell made a late-filed written request for correction of the June 25 hearing transcript. Bell's unopposed request was granted by an order issued September 5, 1997.

⁸ The hearing resulted in 210 additional pages of transcript.

requested multiple extensions of the briefing deadlines. The requested deadline extensions were granted to permit additional settlement negotiations among the parties.

On October 10, 1997, Customers, OCA and Frontier filed a Stipulation proposing a resolution of the cases. The cover letter accompanying the Stipulation asked that Frontier be given an opportunity to discuss the Stipulation with Bell. By order dated October 14, 1997, I extended the previously set briefing deadlines to allow Frontier and Bell to try to reach an agreement. AT&T neither joined nor opposed the Stipulation. By a letter and motion dated November 14, 1997, Bell opposed the Stipulation and requested that a hearing be held on the Stipulation so that Bell could present evidence regarding the terms of the Stipulation. Both OCA and Frontier objected to Bell's hearing request, but by order, their objections were overruled.

On February 12, 1998, a hearing on the Stipulation was held in Harrisburg.⁹ Representatives of all parties attended the hearing.¹⁰

By order, the parties were directed to file main briefs on or before April 30, 1998 and reply briefs on or before May 20, 1998. The parties requested and were granted an extension of the briefing deadlines to May 7, 1998 for main briefs and to May 27,

⁹ On March 30, 1998, Bell made a written request for correction of the February 12 hearing transcript. With one exception, Bell's unopposed request was granted by an order issued April 17, 1998.

¹⁰ The hearing resulted in 86 additional pages of transcript.

1998 for reply briefs. Chief Administrative Law Judge Robert A. Christianson granted the parties a final extension to June 3, 1998 for reply briefs. Main briefs were submitted by Customers, OCA, Frontier, and Bell. AT&T sent a letter proposing that a clarification of the Stipulation made during the February 12 hearing be included in any ruling on the Stipulation. Reply briefs were submitted by Frontier, Bell, and OCA.

Taking into consideration all the hearings on the consolidated complaints, 40 witnesses testified, and 12 written statements of testimony¹¹ plus 15 exhibits were admitted into evidence. A total of 826 transcript pages was produced.

DISCUSSION

The Stipulation results in a subscriber poll of the Genesee, Millport and Shinglehouse calling exchanges to ascertain the interest of Frontier customers in having interLATA EAS.

The general benchmark for determining the acceptability of a stipulation/settlement is whether its proposed terms and conditions promote the public interest. Warner v. GTE North Inc., C-00902815 (opinion and order adopted March 28, 1996, entered April 1, 1996); Pennsylvania Public Utility Commission v. C S Water and Sewer Associates, 74 Pa. P.U.C. 767 (1991) (as a compromise of the signatory parties' positions, a settlement arguably fosters the public interest).

In evaluating whether the parties' Stipulation is consistent with the public interest, I have considered the EAS

¹¹ Written statements were offered by Frontier (2), AT&T (3), Bell (2), OCA (1), and Customers Grom (1), Bricker (1), Tucker (1) and Baker (1).

prerequisites at 52 Pa. Code §63.77.¹² See 52 Pa. Code §63.76; see also 52 Pa. Code §63.74(2). Additionally, I have considered the Commission's opinions and orders at Docket No. P-00951005 regarding Frontier's Chapter 30 plan. In Joint Petition of Frontier Companies for a Streamlined Form of Regulation and Plan for Network Modernization, P-00951005 (opinion and order adopted December 5, 1996, entered December 6, 1996) at 82-84 and 93-94 ¶9, the Commission specified that Frontier should participate in a collaborative process to resolve problems concerning the adequacy of local calling areas and interLATA EAS.

For the following reasons, I conclude that the Stipulation is in the public interest and recommend its acceptance by the Commission.¹³

I. Community of Interest §63.77(4)

Thirty-five members of the public testified in support of EAS at the Genesee hearings. Most of the witnesses were

¹² As correctly noted in Frontier's Reply Brief, the parties were instructed to brief their issues concerning the Stipulation rather than the entire record so that the parties might conserve some time and resources. However, reference to the Commission EAS regulations is helpful in assessing whether the Stipulation is in the public interest. Nevertheless, I stress that any discussion of EAS regulations in this decision is not intended to constitute a definitive fact-finding or legal conclusion on whether any particular party has or has not satisfied a particular EAS regulation. I am merely using the EAS regulations as a backdrop for organizing this decision and evaluating the public interest in accepting the Stipulation. If the Commission rejects the Stipulation, then all parties will have the opportunity to brief the entire record and will not be deemed to have waived any litigated issue on which a compromise had been reached merely for the sake of the Stipulation (Stipulation at 7 ¶¶16-17).

¹³ For clarity, I take this opportunity to mention 3 typographical errors appearing in the Stipulation. In paragraph 11 on page 4, the word "pooling" should be "polling." In paragraph 12.f on page 5, the citation to "52 Pa. Code §63.74(5)" should be to "52 Pa. Code §63.74(4)." In paragraph 12.h on page 5, the word "complaint" should be "complaints."

Frontier customers who described their need to telephone from the Genesee exchange to the Coudersport and Ulysses exchanges.¹⁴ Two witnesses were Frontier customers who described their need to telephone from the Shinglehouse and Millport exchanges to the Coudersport and Ulysses exchanges.¹⁵

In its main brief, OCA summarizes some of the salient customer testimony which establishes the community of interest that Genesee, Shinglehouse and Millport share with Coudersport and Ulysses¹⁶:

The public schools which serve the Genesee community are all located in the Ulysses exchange, as part of the Northern Potter County School system. According to Susan Valentine, the high school principal, 95 children from Genesee attend the elementary school in Ulysses and 71 children from Genesee attend the secondary school. Tr. 167-69.¹⁷ Ms. Valentine testified that as a Genesee resident, she is required to

¹⁴ The Genesee exchange is bordered on the east and southeast by the Ulysses exchange (Tr. 63; Tucker Exhibit 2). The nearest boundary of the Ulysses exchange is 2½ miles from the center of the Village of Genesee (Tr. 63-65). The Genesee exchange is bordered on the south and southwest by the Coudersport exchange (Tr. 65; Tucker Exhibit 2). The nearest boundary of the Coudersport exchange is 8 miles from the center of the Village of Genesee (Tr. 65). The proximity of the exchanges is also demonstrated by the testimony of Genesee Postmistress Denise Elliott who explained that, of her 706 deliveries in Genesee, 287 are to people with the 848 Ulysses and 274 Coudersport exchanges which are toll calls from her post office in Genesee (Tr. 387-88).

¹⁵ Genesee (228 exchange), Shinglehouse (697 exchange), and Millport (698 exchange) are within the same local calling area, and no other telephone exchanges are included in their local calling area (Tucker Exhibit 3).

¹⁶ Frontier concedes that the EAS polling criteria are met for the routes from Millport to Coudersport, Genesee to Coudersport and Genesee to Ulysses (Frontier Reply Brief at 2). However, Frontier does not concede that a community of interest exists between Millport and Coudersport or Shinglehouse and Coudersport (Frontier Reply Brief at 2). The Stipulation represents a compromise of the signatory parties' litigated positions.

¹⁷ Ms. Valentine explained that a total of 452 students attend the elementary school, and 437 students attend the high school (Tr. 169).

make numerous toll calls from home on school business to contact staff members and substitute teachers, the majority of whom do not live in the Genesee exchange. Tr. 167-71. The elementary school guidance counselor also testified that she incurred work related toll calls to contact parents of Ulysses students who were only reachable during the evening hours, when the counselor would make calls from her home in Genesee. Tr. 196-98. Parents testified that calls to notify the school of a child's absence require a toll call or the child risks being charged with truancy. See, e.g., Tr. 283, 358-59.

Coordinating who will meet children at the school bus or which bus they will ride imposes the need for long distance calls to the Northern Potter schools or a spouse at work in Ulysses or Coudersport. Tr. 25-26, 61, 112, 283-88. Students from Genesee have a need to call classmates in Ulysses to get school assignments, socialize, or to coordinate after school activities. Tr. 112, 284. Some parents limit their children's calling to classmates in Ulysses or even limit their after school activities to minimize the financial burden of the toll calls. Tr. 17, 45, 60-61, 98, 290, 357-59.

The fact that calls from Genesee to Ulysses and to Coudersport are toll calls also burdens the activities of ministers and parishioners who live or work in the Genesee exchange. Tr. 51, 95, 103. One Methodist congregation shares a minister between two churches, one in Genesee and one in Ulysses. Tr. 23-24. The church's office is located in Genesee. Tr. 23. Pastor Rex Fullam of the Andrews Settlement Union Church testified that he makes numerous toll calls to both the Coudersport and Ulysses exchange to contact parishioners, including those hospitalized or convalescing at the local hospital or nursing home in the Coudersport exchange. Tr. 291-92. About 39 percent of the Catholic parish in Genesee includes Ulysses residents. Tr. 133. Mrs. Grom testified that for her part, she incurred toll charges to call from Genesee to Ulysses to coordinate church fundraisers. Id. Mrs. Grom identified prayer chains as another occasion when parishioners would need to make calls to other

parishioners outside of the Genesee exchange.
Id.

Genesee residents also testified that their medical and dental needs could not be met within the Genesee exchange. One doctor has office hours in Genesee just two mornings a week. Tr. 51. There is no dentist in the Genesee exchange. Tr. 98. The community hospital is located in the Coudersport exchange as is the local convalescent and nursing home. Tr. 19-20, 42, 414.

Genesee exchange customers testified that they make calls to Ulysses to contact their dentist. See, e.g., Tr. 19, 97, 102, 346, 414. Other Genesee residents testified that they call Coudersport to reach their family doctor or medical specialists such as ear doctors, obstetricians, and gynecologists. Tr. 9, 54-55, 102, 354. Similarly, Genesee residents testified that they needed frequent contact with their doctors, primarily in Coudersport, to discuss prescriptions, hospitalizations, or treatment for long term illnesses or disabilities. Tr. 103, 106, 306-09, 311, 354, 422.

Genesee exchange customers testified as to their need to make calls to Coudersport and Ulysses as part of their involvement in community activities and organizations. Parents testified regarding their involvement in support groups for home schooling or Kids for Kids, a support group for parents and educators of special needs children. Tr. 324-28. Other residents testified that they made long distance calls to Ulysses or Coudersport as part of their involvement in local fraternal organizations, hospice care volunteer work, the PTO or School Board for the Northern Potter County Schools in Ulysses, the Potter County Cooperative Extension, the Agricultural Stabilization and Conservation Service community committee, volunteer work as a summer baseball coach, or to coordinate the Allegheny Mountain Little League. Tr. 19, 95-97, 103, 105-07, 245.

Many of the Genesee residents testified that they have family members who reside in the Coudersport or Ulysses

exchanges. See, e.g. Tr. 132, 277, 307 (Coudersport); see, e.g. Tr. 112, 416, 424 (Ulysses). Thus, Genesee customers must incur toll calls to Coudersport or Ulysses to stay in touch with family members. Others testified that because of the expense of toll calls they limited their calling even to family members in the neighboring exchanges, although it bothered them . . . not to call more. Tr. 112, 132, 418. In the event a parent or relative became ill and was hospitalized or convalescing in the nursing home in Coudersport, Genesee residents have to make additional toll calls to monitor their relative's care. Tr. 102-03, 379.

Coudersport is the county seat and numerous Genesee residents testified as to their need to call the court house, government agencies, and business professionals to conduct their personal affairs or for business reasons. Genesee residents stated that they patronize attorneys, tax service providers, and insurance agents in Coudersport. Tr. 198-99, 217, 222, 259, 282, 364, 407-08, 427. The State Police station, Genesee's only law enforcement protection, is based in the Coudersport exchange. Tr. 19, 51, 428. Genesee residents call the court house or government agencies in Coudersport regarding home schooling, services for the blind or aging, soil conservation programs, social services, the tax assessor's office, or to handle the resolution of a parent's estate. Tr. 56-57, 276, 339, 345, 360, 428. To contact the local district justice, Genesee residents testified that they have to call Ulysses long distance. Tr. 17, 111, 428.

Genesee customers also rely on retail stores in the Coudersport exchange and may call to check prices or availability of items. For example, the pharmacy, J.C. Penney, True Value Hardware, the automotive parts store, and the local garden supply store are in the Coudersport exchange. Tr. 171, 354-55, 405, 417, 424.

. . . .

. . . Linda Ford, a customer with phone service from Frontier Oswayo in both the Millport and Shinglehouse exchanges,

testified that inclusion of the Coudersport exchange in her local calling area would benefit her business as an accountant and allow her toll free access to her doctor, hospital, government agencies, and an Internet provider. Tr. 181-190. Barbara Carpenter, a resident of Millport, also testified that her job as a tax collector required her to incur toll calls to Coudersport. Tr. 190-92.

Ann Reitter, a Genesee exchange customer, testified as to the difficulties and costs of running a volunteer support group for parents and educators of special needs children in the Potter County area. Tr. 324-28. The Kids for Kids group includes families and schools in Genesee, Ulysses, Coudersport, Shinglehouse, Oswayo, and other towns in Bell's territory. Tr. 324. Similarly, Julie Wunderlich testified that there is a home schooling group active throughout Potter County, but it is operated out of Coudersport. Tr. 276.

(OCA Main Brief at 23-26 and 28-29; see also Frontier Statement 1 at 7; Tucker Exhibit 3 consisting of a Frontier telephone directory covering Genesee, Millport and Shinglehouse; Tucker Exhibit 5 consisting of a Bell telephone directory covering Coudersport and also listing telephone numbers in Genesee, Shinglehouse and Millport including the telephone numbers of Customer-complainants and others who testified at the hearings in Genesee.)

II. Toll Charge Traffic \$63.77(1)

The Stipulation offers EAS polling on four routes: Millport to Coudersport, Genesee to Ulysses, Genesee to Coudersport, and Shinglehouse to Coudersport. Viewed in light of the routes' calling frequencies and the other prerequisites for EAS enumerated in 52 Pa. Code §63.77 and discussed in this

Recommended Decision, EAS polling on all four routes is in the public interest.

The Commission regulation at 52 Pa. Code §63.74(2) states that, "[f]or interLATA routes, a route qualifies for EAS if it has an average monthly calling frequency of 5.50 or more calls per access line from one exchange to another." The Commission regulations at 52 Pa. Code §§63.76-.77 explain the criteria used to evaluate a request for EAS on a route whose calling frequency does not automatically qualify for EAS. Corbett v. The Bell Telephone Co. of Pennsylvania, C-00923898 (opinion and order adopted November 10, 1994, entered January 25, 1995) at 13.

A September 1996 Frontier toll traffic usage study¹⁸ revealed an average monthly calling frequency per access line of 8.09 from Millport to Coudersport, 6.22 from Genesee to Ulysses, 5.37 from Genesee to Coudersport, and 3.11 from Shinglehouse to

¹⁸ The study was performed to obtain information more current than Frontier's then-latest biennial interexchange toll traffic usage study (Frontier Statement 1 at 5). See 52 Pa. Code §63.72. Like a biennial toll traffic usage study, Frontier's September 1996 study measures usage in a representative 30-day period (Frontier Statement 1 at 5). See 52 Pa. Code §63.72. Frontier interprets its September 1996 study as demonstrating that the Millport-Coudersport and Genesee-Ulysses routes satisfy the usage requirements for automatic EAS polling (Frontier Statement 1 at 5). Frontier's September 1996 study possesses adequate indicia of reliability to be used in evaluating Customers' EAS complaints and the Stipulation.

Coudersport (Frontier Statement 1 at 5).¹⁹

Frontier acknowledges that, under its September 1996 traffic study, the routes from Millport to Coudersport and from Genesee to Ulysses have sufficient toll traffic to qualify for EAS polling (Frontier Statement 1 at 5). At 5.37 calls per access line, the route from Genesee to Coudersport nearly satisfies the calling frequency requirement for automatic EAS polling. See Pennsylvania Public Utility Commission v. Palmerton, P-00930742 (opinion and order adopted March 10, 1994, entered March 11, 1994). At 3.11 calls per access line, the route from Shinglehouse to Coudersport has considerable traffic which indicates that EAS on the route is being sought as more than a mere convenience.²⁰

Moreover, given that many customers credibly claimed to limit toll calls to Ulysses and Coudersport or to drive to friends' and relatives' homes located where calls to Ulysses and Coudersport are toll-free, toll traffic usage studies regarding the four routes may understate customers' need for EAS between

¹⁹ In addition to the September 1996 study, Frontier also conducted a July 1996 toll traffic usage study in response to the present complaints. The July study showed that, during the study month of July 1996, 23% of Frontier's Genesee customers made 6 or more calls to Ulysses and an additional 32% of Frontier's Genesee customers made 1 to 5 calls to Ulysses (Tucker Exhibit 6). The same study showed that, during the study month, 24% of Frontier's Genesee customers made 6 or more calls to Coudersport and an additional 32% of Frontier's Genesee customers made 1 to 5 calls to Coudersport (Tucker Exhibit 6).

²⁰ The calling frequency on the Shinglehouse to Coudersport route is 4 times greater than the highest calling frequency on a route involved in Warner v. GTE North Inc., C-00902815 (opinion and order adopted March 13, 1997, entered March 18, 1997) at 9-10. Consequently, unlike the routes in Warner, the routes in the present cases have substantial traffic which shows a need for EAS.

the exchanges on each route (Tr. 11, 33-34, 61, 98, 103-04, 108 and 338).

III. Increased Local Charges \$63.77(3)

By offering EAS on four routes, the Stipulation allows Frontier to spread the costs of EAS over a larger customer base and thus reduce the proportionate share of the EAS costs which each customer will be asked to pay. Palmerton (the Commission held that customers' best interests were served by having a telephone company implement several EAS routes to maximize revenues and minimize expenses produced by EAS). Accordingly, the Stipulation logically conditions EAS implementation upon having at least 50% of all the affected Frontier customers return a ballot and having a majority of the returned ballots request EAS so that EAS on the four routes will be implemented jointly (Stipulation at 4 and Exhibits A at 3 and B at 3.)²¹

The Stipulation provides that, in addition to their current local service charges, all residential and business customers in the Shinglehouse and Millport exchanges will be charged \$1.50 monthly for EAS to the Coudersport exchange (Stipulation, Exhibit A at 2), and all residential and business customers in the Genesee exchange will be charged \$3.95 monthly for EAS which will include both the Coudersport and Ulysses exchanges (Stipulation, Exhibit B at 2).

²¹ In significant part, the proposed ballots for the EAS polling (Stipulation at Exhibits A and B) are similar to the ballots appearing in Attachment A of the Commission's Palmerton opinion and order.

The Stipulation represents a significant compromise of the signatory parties' positions. In litigation Frontier had advocated that, in addition to their current local service charges, all customers in the Genesee exchange be charged \$7.35 monthly for EAS to the Coudersport and Ulysses exchanges and all customers in the Shinglehouse and Millport exchanges be charged \$4.10 monthly for EAS to the Coudersport exchange (Frontier Statement 1 at 14-16).

The Commission regulation at 52 Pa. Code §63.77(3) invites a comparison of customers' current charges for interexchange toll calls with customers' potential increase in local service charges due to EAS. In the present cases, such a comparison cannot be made with complete accuracy. Frontier witness Kelly M. Goodnight credibly testified that neither Frontier nor AT&T knew the amount of total revenue collected by interexchange carriers from Frontier customers for interLATA toll service to Bell's Coudersport and Ulysses exchanges (Frontier Statement 1 at 9).

However, some perspective can be gleaned from Frontier's July 1996 toll traffic usage study.²² This study reveals that, from July 1 through July 31, 1996, customers who called from the Genesee exchange to the Ulysses exchange generated total toll charges of \$1,138.75 for an average of \$4.05

²² During the hearings in Genesee, Customer-complainant Karen Tucker questioned whether July was a representative period for a toll traffic usage study. See 52 Pa. Code §63.72. Mrs. Tucker astutely observed that customers in Genesee might be expected to make fewer toll calls to Coudersport and Ulysses in July because "July is a month when school is not in session and when many people go on vacation" (Tr. 75).

per customer, and customers who called from the Genesee exchange to the Coudersport exchange generated total toll charges of \$991.26 for an average of \$3.49 per customer (Tucker Exhibit 6). Under the July 1996 study, the combined Coudersport and Ulysses toll charge would be \$7.54 per customer for the month of July 1996. Given the Stipulation's monthly Coudersport and Ulysses EAS charge of \$3.95 per customer, a customer calling from the Genesee exchange to the Coudersport and Ulysses exchanges would save \$3.59 for the month with EAS ($\$7.54 - \$3.95 = \$3.59$).

IV. Economic Effect \$63.77(6)

Several customers testified that the lack of EAS to Coudersport impeded their business ventures in Genesee, Shinglehouse or Millport by denying them toll-free access to an Internet service provider (Tr. 59-60, 182, 183-88, 238, 401 and 409-11).^{23,24}

OCA's main brief highlights some of the other customer testimony about the adverse economic effect²⁵ produced by the absence of EAS to Ulysses and Coudersport:

Lorentz Hinrichsen testified that his company, Genesee Natural Foods ("GNF"), [regularly] incurred toll calls to contact business customers, [insurers, the weights

²³ EAS to Coudersport would allow customers in Genesee, Shinglehouse and Millport to have toll-free access to an Internet service provider in Coudersport (Tr. 188; Stipulation at 6).

²⁴ After the hearings in Genesee, Frontier made efforts to arrange for an Internet service provider to offer Frontier customers local calling access to the Internet (Frontier Statement 1 at 11).

²⁵ Apart from the Stipulation which is a compromise of the signatory parties' litigation positions, Frontier does not concede that a lack of EAS has an adverse economic impact on the communities involved in the current cases (Frontier Reply Brief at 2).

and measures agency,] employees and vehicle repair shops or parts stores in Coudersport and Ulysses. Tr. 404-05 [and 408]. GNF participates in a jobs program open to seniors at the Northern Potter High School. Tr. 402. Toll free calling to Ulysses "would make it a lot more reasonable for us [Genesee Natural Foods] to communicate with the school there...." according to Mr. Hinrichsen. *Id.* He also testified that GNF incurs toll calls to reach regulatory agencies such as weights and measures and lawyers. *Id.* [Mr. Hinrichsen also stated that he would like to be able to call Coudersport with sales calls "just drumming up business," but, due to toll charges, he reduces or avoids such calls (Tr. 406).]

Similarly, the farmers, tax collector, contractor, and logger based in Genesee testified as to their need to call Bell's Coudersport exchange to reach the court house or government offices necessary to their businesses. Tr. 59-60, 190, 199, 202, 234, 257, 338-39. Other business reasons for calling to Coudersport or Ulysses include contacting employees, customers or suppliers. For example, Mr. Junior Baker testified that as part of his farm business, he dealt with the fertilizer vendor in Ulysses, agricultural and soil conservation agencies in Coudersport. Tr. 338-39. These services are not available within the Genesee exchange. Similarly, Mrs. Claire Miller has no choice but to incur toll calls to reach customers and suppliers in the Coudersport and Genesee exchange as part of her Mary Kay cosmetics business. Tr. 40-42.

(OCA Main Brief at 27.)

V. EAS Alternatives \$63.77(5)

During the hearings, the parties identified calling plans and a change in access to interexchange carriers that could help reduce toll charges for Frontier customers calling the Coudersport and Ulysses exchanges.

On May 17, 1996, AT&T offered Frontier customers optional calling plans from the Genesee exchange to the Coudersport exchange, from the Genesee exchange to the Ulysses exchange, and from the Millport exchange to the Coudersport exchange (AT&T Statement 1.0 at 4 and Appendix A; Frontier Statement 1 at 9; Tucker Exhibit 4).²⁶ The optional calling plans give customers discounted rates for AT&T service based on the hour and day when calls are made as well as the distance over which calls are placed (AT&T Statement 1.0 at 5 and Appendix B). The discounted rates result in savings of about 55% on daytime calls and 50% on calls made at other times (AT&T Statement 1.0 at 5 and Appendices B and C).²⁷

Also available are other AT&T toll discount plans for which some Frontier customers might qualify. To illustrate, AT&T offers a True Reach plan which discounts domestic long-distance calls by 25% if a customer's monthly toll bill is \$25 or higher (AT&T Statement 1.0 at 5 and Appendix D).

On or about October 1, 1996, Frontier customers were afforded equal access to interexchange carriers so that each customer could choose a long-distance carrier (AT&T Statement 1.0 at 6; Frontier Statement 1 at 10). With equal access, customers

²⁶ AT&T did not offer an optional calling plan for Frontier customers in Shinglehouse (AT&T Statement 1.0 at 4).

²⁷ For example, the discount rate for a call during the day at a distance of 11 to 22 miles is 19¢ for the first minute and 12¢ for each additional minute compared to the non-discounted rate of 29¢ for the first minute and 29¢ for each additional minute (AT&T Statement 1.0 at Appendices B and C; Frontier Statement 1 at 9).